

STATE OF NORTH CAROLINA Department of Health & Human Services Division of Services for the Deaf & Hard of Hearing	INVITATION FOR BIDS NO. 30-ITS-008473-15
	Bids will be publicly opened: August 26, 2014
	Contract Type: Agency Specific
Refer <u>ALL</u> Inquiries to: Debbie Strickland E-Mail: Debbie.Strickland@dhhs.nc.gov	Issue Date: August 5, 2014 Commodity Number: 725 Commodity: Assistive Telecommunications Equipment
Telephone Number: 919-855-4087	Using Agency Name: Division of Services for the Deaf and Hard of Hearing (DSDHH)
(See page 2 for mailing instructions)	Agency Requisition No. N/A

OFFER AND ACCEPTANCE

This solicitation advertises the State's needs for the goods and/or services described herein. The State seeks proposals comprising competitive bids offering to sell the goods and/or services described in this solicitation. The State's acceptance of any proposal must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence among terms as follows: Special terms and conditions specific to this IFB, Specifications of the solicitation documents, ITS Instructions to Vendors, North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services and the awarded Vendor's proposal. **Provided, however, that no contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

EXECUTION

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion (G.S. 147-33-100).

Failure to execute/sign bid prior to submittal shall render bid invalid. Late bids are not acceptable.

BIDDER:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for sixty (60) days from date of bid opening unless otherwise stated here: ____ days (See Instructions to Vendors, Item 5). Prompt Payment Discount: _____ % _____ days (See Instructions to Vendors, Item 6).

ACCEPTANCE OF BID

If any or all parts of this bid are accepted, an authorized representative of Department of Health and Human Services (DHHS) shall affix their signature hereto and this document and the provisions of the Instructions to Vendors, special terms and conditions specific to this Invitation for Bids, the specifications, and the North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

FOR DHHS USE ONLY

Offer accepted and contract awarded this ____ day of _____, 20__, as indicated on attached certification,

by _____ (Authorized representative of DHHS).

DELIVERY INSTRUCTIONS: Sealed bids, subject to the conditions made a part hereof, will be received at the address below, for furnishing and delivering the commodity as described herein. Bids submitted via facsimile (FAX) machine, telephone or electronically in response to this Invitation for Bids will not be accepted. **Bids are subject to rejection unless submitted on this form.**

Deliver one **(1) signed original executed** bid response and one **(1) copy** of the executed bid response. Address envelope and insert bid number as shown below. It is the responsibility of the Vendor to have the bid in this office by the specified time and date of opening. **Vendor must return all the pages of this solicitation in their response.** Vendor must also submit one (1) signed, executed electronic copy of its proposal on USB Flash Drive or read-only CD/DVD(s). The files should not be password-protected and should be capable of being copied to other media.

Address envelope and insert bid number as shown below. Please note that the US Postal Service does not deliver any mail (US Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **Vendor must return all the pages of this solicitation in their response. It is the responsibility of the Vendor to have the bid in this Office by the specified time and date of opening.**

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
BID NO. 30-ITS-008473-15 Office of Procurement and Contract Services Attn: Debbie Strickland 2008 Mail Service Center Raleigh, NC 27699-2008	BID NO 30-ITS-008473-15 Office of Procurement and Contract Services Attn: Debbie Strickland 801 Ruggles Drive, Hoey Building Raleigh, NC 27603

DIGITAL IMAGING: The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

ADDENDUM TO IFB: If written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/>, and shall become an Addendum to this IFB. Vendors' questions posed orally at any pre-bid conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer. Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this proposal periodically check the State website for any and all Addenda that may be issued prior to the bid opening date.

BASIS FOR REJECTION: Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the requirements or intent of this solicitation; lack of competitiveness; error(s) in

specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

NOTICE TO VENDORS: The State objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the document as part of the Bidder's response. By execution and delivery of this Invitation for Bids and response(s), the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

Sealed bids, subject to the conditions made a part hereof, will be received at this office **801 Ruggles Drive, Raleigh, NC 27603** until 2:00 pm Eastern Time on the day of opening and then opened, for furnishing and delivering the goods and/or services as described herein. Refer to Delivery Instructions for proper mailing instructions. Bids submitted via facsimile (FAX) machine, telephone or electronically in response to this Invitation for Bids will not be accepted. **Bids are subject to rejection unless submitted on this form.**

LATE PROPOSALS: Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

AWARD NOTIFICATION: A link to the Interactive Purchasing System (IPS) allows the public to retrieve bid award information electronically from the Internet web site: <https://www.ips.state.nc.us/ips/> Results may be found by searching by bid number or agency name. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.

VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/ips>

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SECTION 1: IFB SCHEDULE**Bid Questions**

Due Date: August 12, 2014

Time: 2:00 p.m. Eastern Time

Address:

Instructions: Written questions will be received at Debbie.Strickland@dhhs.nc.gov until date and time specified above. Please enter "Questions 30-ITS-008473-15" as the subject for the email. Questions received after this deadline will not be accepted.

The State will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) <http://www.ips.state.nc.us/ips/pubmain.asp>. Oral answers are not binding on the State.

Vendor contact regarding this IFB with anyone other than Debbie Strickland may be grounds for rejection of said Vendor's offer. Agency contact regarding this IFB with any Vendor may be grounds for cancellation of this IFB. **It is the Vendor's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

Bid Submittal

Due Date: August 26, 2014

Time: 2:00 p.m. Eastern Time

Mail Address: See page 2

Instructions: All bids must be sealed and are subject to the conditions of this IFB. Indicate the firm's name and IFB number on the front of the sealed envelope or package.

Include **one (1) original** executed bid and **one (1) copy** of the executed bid response. Vendor must also submit one **(1) electronic, signed copy** of its proposal on a USB Flash Drive or read-only CD/DVD(s). The files on the discs should not be password-protected and should be capable of being copied to other media.

Each original bid must be signed and dated in ink, by an official authorized to bind the company. The Vendor, by making an offer, expressly represents that the specifications herein have been read and understood, and that the offer complies with all aspects. Any change that is received after the bid opening, and that is not specifically solicited by the State, shall be rejected.

Firm Bid: Prices and any other entry made hereon by the Vendor shall be considered firm and not subject to change.

SECTION 2: INTENT, USE, DURATION AND SCOPE

The purpose of this Invitation for Bids (IFB) is to obtain pricing for and select a Vendor(s) to provide assistive telecommunications equipment for Deaf, Hard of Hearing and Deaf Blind Recipients for the DSDHH. DSDHH administers the Equipment Distribution Service (EDS) to help ensure that low-income Deaf, Deaf-Blind, and Hard of Hearing and Speech Impaired individuals to have the appropriate assistive equipment necessary for equal access to telecommunications technology.

This bid process will establish an Agency Specific Contract for EDS to provide this specialized equipment to North Carolina residents who are certified as being impaired and meet income limits. Bidding will be in accordance with the terms and conditions of this IFB and any addenda thereto.

This contract, once established, will be effective for one (1) year from the date of award. The State reserves the option to extend this contract for two (2) additional years in one (1) year increments. The State also reserves the option to further amend the contract as required by future Legislative activities.

The estimated annual dollar value of this contract is \$240,000.00. However, the State cannot and will not guarantee any minimum or maximum quantities on this contract.

45 day return policy.

SECTION 3: VENDOR OFFER

Bid must be submitted on the forms provided herein. Bids submitted in any other format may be subject to rejection. If additional sheets are required (for example, Vendors who are offering alternate proposals); the Vendor should submit a separate bid document. Any **alternate proposals** must be clearly marked as such with the phrase "alternate bid for 'name of' Vendor" and numbered sequentially with the first bid. This legend must be in bold type of not less than 14 point type on the face of the bid, and on the text of the alternative proposal.

Reseller Information - The Agency acknowledges that the Reseller has merely purchased the Third Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party Items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency.

Vendor Utilization of Workers Outside the U.S.: In accordance with NC General Statute 147-33.97, the Vendors must detail in the bid response, the manner in which it intends to utilize resources or workers. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:

- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States
- b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
- c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a state contract outside of the United States
- d) Any Vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided

Will any work under this contract be performed outside the United States?	
Where will services be performed: _____	YES _____ NO _____

SECTION 4: E-PROCUREMENT

This is not an e-procurement solicitation. Paragraph #47 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services does not apply. General information on the e-procurement service can be found at <http://eprocurement.nc.gov/>.

As of the IFB submittal date, the Vendor must be current on all e-Procurement fees. If the Vendor is not current on all e-Procurement fees, the State may disqualify the Vendor from participation in this IFB.

SECTION 5: DELIVERY

The successful Vendor(s) must complete delivery within thirty (30) consecutive calendar days after receipt of order to various North Carolina locations. State your guaranteed delivery date:

Delivery will be made from _____ (city, state) within _____ consecutive calendar days after receipt of purchase order.

Note:

- **Consumer signature required upon delivery of the equipment.**
- **Equipment delivery tracking number document required to be sent with the invoice for payment processing.**
- **The address shall be validated by the vendor's address verification system. The vendor shall determine which delivery carrier (UPS, USPS, FedEx, etc) is best suited to use for package deliveries to the designated residences in NC.**

SECTION 6: WARRANTY

The Vendor warrants that all equipment furnished under this IFB will be new, of good material and workmanship. The warranty shall be the manufacturer's standard warranty. Such replacement shall include all parts, labor, and transportation cost to the location where equipment is down, free of any charge to the owner or his representative. Vendor shall supply the warranty period for each line item as directed in Section 12: Furnish and Deliver.

Warranty shall cover costs of all service, parts, and labor at no additional cost to the State or its client. Any item found to be defective beyond the warranty period will be shipped to the responsible party noted below for handling repairs, and if it cannot be repaired, it will be replaced.

(Check Yes or No)

A.	Bidder is manufacturer authorized to repair equipment offered during the warranty period?	Yes		No	
B.	Will bidder perform Warranty Service?	Yes		No	

If Yes to B, complete this section:

Contact Person			
Telephone Number		Toll-free Number	
Address of Service Facility			

If No to B, complete this section: (who will perform the Warranty)

Company Name		Contact Person	
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Address				City			State	Zip
Telephone Number				Toll-free Number				

SECTION 7: PRODUCT RECALL

Vendor assumes full responsibility for prompt notification of both the contract administrator and purchaser of any product recall in accordance with the applicable state and federal regulations.

SECTION 8: BID AWARD

It is the general intent to award this contract by line item; therefore, may result in multiple Vendor awards in each category. As provided by statute, award will be based on Best Value Analysis, (Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.) See ITS Instructions to Vendors, Item #11.

The State, at its sole discretion, reserves the right to reject any offers that do not meet specifications.

SECTION 9: POSSESSION AND REVIEW

During the evaluation period and prior to award, possession of the bids and accompanying information is limited to personnel of the issuing agency, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

After award of contract the complete bid file will be available to any interested persons with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule. Any proprietary or confidential information, which conforms to exclusions from public records as provided by NC General Statute, 132-1.2 **must be clearly marked as such in the offer when submitted.**

SECTION 10: BRAND SPECIFIC

ALL manufacturer names and product description used in this solicitation are brand/product specific. The items offered in response to this solicitation must be the manufacturer and type specified. No substitutions will be accepted.

SECTION 11: SPECIFICATIONS

All specifications listed must be accepted by the awarded Vendor(s).

- A. EDS will issue a Purchase Authorization form to the Vendor on behalf of a client. The Purchase Authorization form will serve as Vendor notification to deliver specialized telecommunications equipment directly to the client. Purchase Authorization forms shall be valid only for equipment that is available under the contract resulting from this IFB.
- B. The value of the Purchase Authorization will be indicated on the form. All costs, including any shipping charges will also be included on the form. No additional charges will be allowed if not identified on the Purchase Authorization.

- C. The client is responsible for equipment maintenance and repairs after the warranty period. The Vendor must provide written warranty information and a user manual with any equipment purchased from this contract.
- D. Purchase Authorizations cannot be used for non-telecommunications equipment including, but not limited to, non-basic telephones/equipment, supplies, personal assistive equipment, extended warranties, TTY paper, sound systems, TV decoders, fax machines, doorbell/baby cry equipment, answering machines, batteries, personal computers, smoke alarms, wheelchairs, switch mounting, wheelchair mounting, keyguards, Daessy mounting plate, head pointing, switches used for communication access devices, etc. No Purchase Authorizations shall be fulfilled from anyone other than the EDS Coordinator.
- E. The Vendor must submit the signed Purchase Authorization, along with the equipment invoice, to EDS within 10 days of the date Vendor ships all items.
- F. The Division of Services for the Deaf and Hard of Hearing requires a designated single point of contact ("Project Manager") from within the Vendor's organization. The Project Manager must coordinate discrepancy resolutions, billing issues, pricing issues, and contractual/procedural issues. The Vendor must notify the State in writing within 10 calendar days of a change of the Project Manager. The Vendor shall provide the following information regarding the Project Manager assigned initially for the contract and whenever Project Manager's status changes.

Project Manager: _____

Telephone Number: _____

Email Address: _____

- G. While EDS staff will make every effort to assist the client in choosing the appropriate device, instances may occur where the client receives equipment that does not meet their communication needs. On such occasions, the client may, at the expense of the State, return the equipment to the Vendor that supplied the equipment.
 - a) If the device is returned to the Vendor within 45 days of delivery to the client, the Vendor must agree to exchange the device for another contract item with no restocking fee charge.
 - b) If the product exchange is made after 45 days of receipt, DSDHH will pay a restocking fee of no more than 10%.
 - c) If the contract price of the new device is more than the contract price of the exchanged device, the Vendor may invoice the State for the difference.
 - d) If the price of the new device is less than the price of the exchanged device, the Vendor must issue a credit invoice for the price difference to the State within 30 days.
 - e) If the client needs equipment from a different Vendor, then the client would contact one of our Telecommunications Specialist (one of EDS staff) for assistance in returning the equipment and asking for equipment from different Vendor. One of our statewide Regional Centers will assist the client in testing and selecting the appropriate second device.
- H. The Vendor must provide two training sessions for up to two days per session for up to 50 individuals at no additional charge to the State. Training shall be offered to DSDHH staff for purposes of in-field troubleshooting. Training will include demonstration, troubleshooting, and overall use of the equipment offered by the Vendor and will be provided in Greensboro, North Carolina as specified and scheduled by the EDS Coordinator. In addition, the Vendor must provide one set of softcopy version of specifications (electronic copy) for each item awarded to the Vendor which shall be used by the DSDHH staff performing the troubleshooting. Upon request by the State, the vendor may be requested to provide training directly to a consumer.

- I. The Vendor is required to provide Training Materials and/or Instructions for Use Information manuals (acceptable alternative formatting of such text may include ASL Open Captioning on VHS, CD, DVD etc.) with each piece of equipment shipped to clients. Such information shall be provided at no additional charge.
- J. The Vendor is required to provide 7 of each model of the awarded devices for DSDHH's Regional Center (Statewide) demonstrations to the clients as part of their equipment orientations, if our Regional Centers request. This equipment will be provided at the Vendor's expense throughout the contract period.
- K. If any awarded product is to be discontinued or no longer in production, the Vendor is required to notify EDS and the Contract Department immediately and offer a new replacement with similar features along with a new price. The notification must include the following:
 - a) Copy of official notice from manufacturer regarding increase of cost (this will need to be provided on the manufacturer's letterhead and include a signature)
 - b) Copy of official notice from manufacturer regarding the discontinuation of the equipment (this will be provided on the manufacturers letterhead and include a signature). This should also state the effective date of the discontinuation.
 - c) State if there is a replacement offered by the manufacturer for the discontinued equipment.
 - d) If so, what is the replacement and the effective date?

NOTE: On behalf of the Department, DSDHH is currently evaluating web-based software applications that could automate some of the scheduling and billing processes described in the contract. If DSDHH acquires such software, the Vendor will be required to use the online application, at no cost to the Vendor. Other divisions and offices within the Department may choose to use the software applications for their transactions as well.

SECTION 12: FURNISH AND DELIVER

NOTE: IMPORTANT

Bidder shall complete this table. If not bidding on a line item, place "No Bid" in the extended cost column. If a line item's cost is included in another line item, place "Included" in the extended cost column and note the line item # it is included with. If bidding an item with no charge, place "N/C" in the extended cost column.

Equipment for Deaf, Hard of Hearing and Deaf-Blind Recipients BID ONLY BRANDS SPECIFIED – NO SUBSTITUTIONS			
LINE	QTY	DESCRIPTION	UNIT COST
1.	1	Ultratech Superprint 4425 TTY Vendor Part #: _____ Warranty: _____ /months	
2.	1	Clarity Ameriphone Q90D TTY/VCO Vendor Part #: _____ Warranty: _____ /months	

3.	1	Clarity Ameriphone Dialogue VCO with Port by Clarity (Corded) Vendor Part #: _____ Warranty: _____ /months	
4.	1	Krown MP 2000D LVD Vendor Part #: _____ Warranty: _____ /months	
5.	1	Clarity XLC3.4 Amplified Cordless w/ Caller ID Vendor Part #: _____ Warranty: _____ /months	
6.	1	Clarity ALTO Amplified (Corded) Vendor Part #: _____ Warranty: _____ /months	
7.	1	Clarity ALTO PLUS Amplified (Corded) Vendor Part #: _____ Warranty: _____ /months	
8.	1	Clarity Fortissimo Speakerphone with Pendant Microphone Vendor Part #: _____ Warranty: _____ /months	
9.	1	Serene Innovations Outgoing Speech Amplified HD40S Vendor Part #: _____ Warranty: _____ /months	
10.	1	Serene Innovations CL-60 Cordless Vendor Part #: _____ Warranty: _____ /months	
11.	1	ClearSounds CSC600 Digital Amplified Freedom w/ Full ClearDigital Power Vendor Part #: _____ Warranty: _____ /months	
12.	1	Geemarc Digital Amplified - Ampli455 Vendor Part #: _____ Warranty: _____ /months	

13.	1	Clarity CSC600ER - Amplified SOS (Corded) Vendor Part #: _____ Warranty: _____ /months	
14.	1	Serene HD60J Amplified Phone with Jumbo Keypad Vendor Part #: _____ Warranty: _____ /months	
15.	1	HumanWare Deaf Blind Communicator, 16 cells Vendor Part #: _____ Warranty: _____ /months	
16.	1	HumanWare Deaf Blind Communicator, 32 cells Vendor Part #: _____ Warranty: _____ /months	
17.	1	Captel Model 840 Captioned (Basic) Vendor Part #: _____ Warranty: _____ /months	
18.	1	Captel Model 840i Captioned (Internet-connected) Vendor Part #: _____ Warranty: _____ /months	
19.	1	Clarity Ameriphone SR 200 Super Phone Ringer Vendor Part #: _____ Warranty: _____ /months	
20.	1	Krown Telephone Ringer Amplifier with Strober Light Vendor Part #: _____ Warranty: _____ /months	
21.	1	Serene Innovations RF-200 Super Loud Cell/Phone Ringer/Flasher Vendor Part #: _____ Warranty: _____ /months	
22.	1	Serene Innovation CA360 notification combo (Clock/receiver with doorbell and phone notification and remote receiver) Vendor Part #: _____ Warranty: _____ /months	

23.	1	Alertmaster AL10 Notification System, with AL12 Remote Receiver Vendor Part #: _____ Warranty: _____ /months	
24.	1	Silent Call Vibra-call receiver with battery charger & phone transmitter Vendor Part #: _____ Warranty: _____ /months	
25.	1	Alertmaster AL10 Notification and AMPXB Personal Tactile Signaler Vendor Part #: _____ Warranty: _____ /months	
26.	1	Serene Innovations PA30 Inline Amplifier Vendor Part #: _____ Warranty: _____ /months	
27.	1	HA40 In-Line Amplifier Vendor Part #: _____ Warranty: _____ /months	
28.	1	CLA7v2 Amplified Powered Neckloop Vendor Part #: _____ Warranty: _____ /months	
29.	1	Clarity CE50 HearIt Mobile Bluetooth Neckloop Amplifier Vendor Part #: _____ Warranty: _____ /months	
30.	1	Pocketalker Pro Personal Sound Amplifier w/ Deluxe Folding Headset & Comfort Duett Telephone Kit Vendor Part #: _____ Warranty: _____ /months	

TOTAL COSTS \$ _____

Energy Star

“ENERGY STAR® is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency.” <http://www.energystar.gov/>

Do the products offered meet Energy Star specifications for energy efficiency?	Yes		No	
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Sustainability

In an effort to support the sustainability efforts of the State of North Carolina Executive Order Number 156, we solicit your cooperation. <http://www.p2pays.org/ref/03/02221.pdf>

Does the packaging of the item(s) offered in response to this solicitation contain recycled content? Yes No

If yes, what is the recycled content? _____% Can this packaging be recycled? Yes No

Do the item(s) offered have any recycled content? Yes No

If yes, what is the recycled content? _____%

How can the items be disposed of or can it be recycled at the end of use?

Historically Underutilized Businesses

“Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.” <http://www.doa.nc.gov/hub/>

Pursuant to General Statute 143-48, 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this Invitation for Bids.

Are you a Historically Underutilized Business (i.e., minority, woman or disabled-owned business)?

_____ Yes _____ No

If applicable, specify classification. _____

SECTION 13: ITS INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **DEFINITIONS:**
 - **THE STATE:** Is the State of North Carolina and its agencies.
 - **ITS:** Office of Information Technology Services
 - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
 - **TERM CONTRACT:** a contract in which a source of supply is established for a specified period of time for specified services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **TECHNICAL SERVICES CONTRACT:** A contract to provide for information technology specialty services for specific projects or assignments.
 - **ITS CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or services. These contracts are in place for the convenience of the state and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
3. **NOTICE TO VENDORS:** All bids are subject to the provisions of the Instructions to Vendors, special terms and conditions specific to this Invitation for Bids, the specifications, and the ITS Terms and Conditions. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** *The State objects to and will not evaluate or consider any additional terms and conditions submitted with a Vendor response.* This applies to any language appearing in or attached to the document as part of the Vendor's response. Bids with terms and conditions attached will be subject to rejection.
4. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services, and (4) Instructions to Vendors.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for 30 days from the date of bid opening.
6. **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. **Only information that is received in response to this IFB will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items, which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the

use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers in the Office of Information Technology Services those products or packaging they offer which have recycled content and that are recyclable.

9. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from the State. The Vendor is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
10. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
11. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item bid. In addition, on agency specific or term contracts, the State reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the State to be pertinent or peculiar to the purchase in question.
12. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the Vendor's expense. Written request for the return of samples must be made within ten (10) days following date of bid opening. Otherwise the samples will become the property of the State. Each individual sample must be labeled with the Vendor's name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
13. **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over \$25,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bid status and Award notices are posted on the Internet at <http://www.ips.state.nc.us>. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1101 - .1121.**
14. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
15. **NON-RESPONSIVE BIDS:** Vendor bid responses will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:
 - "This bid does not constitute a binding offer",
 - "This bid will be valid only if this offer is selected as a finalist or in the competitive range",
 - "The vendor does not commit or bind itself to any terms and conditions by this submission",
 - "This document and all associated documents are non-binding and shall be used for discussion purposes only",

- “This bid will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent.

16. **E-VERIFY:** Pursuant to N.C.G.S. 147-33.95(g), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

SECTION 14: NORTH CAROLINA INFORMATION TECHNOLOGY PROCUREMENT OFFICE GENERAL TERMS AND CONDITIONS FOR GOODS AND RELATED SERVICES

Definitions: As used herein;

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

State shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.

1) Standards: Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or Federal Regulation,
- by the Chief Information Officer's (CIO) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.

c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

2) Warranties: Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.

3) Personnel: Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

b) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

- i) Such use does not conflict with the terms, specifications or any amendments to this Contract , or
- ii) Such use does not conflict with any procurement law, regulation or policy, or
- iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

4) Subcontracting: The Vendor may subcontract the performance of required services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

5) Vendor's Representation: Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

a) Intellectual Property. Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Inherent Services. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly

provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables

c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction

d) Warranty as to Equipment; Hardware. Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.

6) Software License (for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto): Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

7) Maintenance/Support Services: Unless otherwise provided in the State's solicitation document, or in an attachment hereto, for the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

a) Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance services under this Paragraph.

b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.

c) Updates. Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and

made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.

d) Telephone Assistance. Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, **8:00 AM - 5:00 PM Eastern Time, Monday-Friday**. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

8) Travel Expenses: All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Contract.

9) Governmental Restrictions: In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.

10) Prohibition Against Contingent Fees and Gratuities: Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B.1207, or other provision of law.

11) Availability of Funds: Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit

payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

12) Payment Terms: Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

13) Acceptance Criteria: In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing, ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

14) Equal Employment Opportunity: Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

15) Inspection at Vendor's Site: The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.

16) Advertising/Press Release: The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

17) Confidentiality: In accordance with 9 NCAC 06B.0103, 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade

secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL**”. By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

- a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
- b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

18) Deliverables: Deliverables, as used herein, shall comprise all project materials, including goods, software license, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

19) Late Delivery, Back Order: Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

20) Patent, Copyright, and Trade Secret Protection:

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.

d) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

21) Access to Persons and Records: Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

22) Assignment: Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

23) Insurance Coverage: During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

24) Dispute Resolution: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

25) Default: In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) herein, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1207 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

26) Waiver of Default: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 40) herein below.

27) Termination: Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- a) The parties may mutually terminate this Contract by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the

convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

28) Limitation of Vendor's Liability:

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

29) Vendor's Liability for Injury to Persons or Damage to Property:

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

30) General Indemnity: The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

- a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

31) Changes: This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor

are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

32) Stop Work Order: The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.

a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

- i) Cancel the Stop Work Order, or
- ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
- ii) The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

33) Price Adjustments For Term Contracts: Reserved

34) Time is of the Essence. Time is of the essence in the performance of this Contract.

35) Date and Time Warranty: The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

36) Independent Contractors: Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

37) Transportation: Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase

order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

38) Notices: Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

39) Titles and Headings: Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

40) Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

41) Taxes: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

42) Governing Laws, Jurisdiction, and Venue:

a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

43) Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

44) Compliance with Laws: The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

45) Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

46) Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

47) Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

48) Electronic Procurement (Applies only to Statewide Term Contracts): Reserved.